

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1908..

No. 1885.

553

DENNIS C. SHEA, APPELLANT,

vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, AND JAY
J. MORROW, COMMISSIONERS OF THE DISTRICT OF
COLUMBIA, AND THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED MARCH 30, 1908..

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1885.

DENNIS C. SHEA, Appellant,
vs.
HENRY B. F. MACFARLAND ET AL.

1 Supreme Court of the District of Columbia. In Equity.

No. 23238.

DENNIS C. SHEA, Complainant,
vs.
HENRY B. MACFARLAND, JOHN W. ROSS, and JOHN BIDDLE, Commissioners of the District of Columbia, and THE DISTRICT OF COLUMBIA, Defendants.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to-wit:

Bill.

Filed April 14, 1902.

In the Supreme Court of the District of Columbia. In Equity.

No. 23238, Docket 52.

DENNIS C. SHEA, Complainant,
vs.
HENRY B. MACFARLAND, JOHN W. ROSS, and JOHN BIDDLE, Commissioners of the District of Columbia, and THE DISTRICT OF COLUMBIA, Defendants.

To the Supreme Court of the District of Columbia:

The complainant, Dennis C. Shea, brings this his bill of complaint against the above named defendants, and thereupon he avers and shows:

1. That he is a citizen of the United States and a resident of the

2 District of Columbia, and brings this bill in his own right.

2. That defendants Macfarland, Ross and Biddle are sued as Commissioners of the District of Columbia, and the District of Columbia, the other defendant, a municipal corporation, is sued in its own right.

3. That complainant is seized and possessed of sub-lot numbered twenty-eight in block numbered twelve (12) in a subdivision of lands known as Le Droit Park, and of lots numbered fourteen (14) fifteen (15), sixteen (16) seventeen (17) and eighteen (18) in a subdivision of lands known as addition to Le Droit Park, all lying and being in the District of Columbia.

4. That heretofore, to-wit, on or about the 8th day of March, A. D., 1899, the said Commissioners of the District of Columbia filed a petition in this Honorable Court, in a certain cause numbered 544 on the dockets of the District Court, asking that a jury of seven disinterested, judicious men be summoned to assess the damages, if any, which each owner of land might sustain by reason of a proposed extension of Rhode Island Avenue, the same being one of the public streets or thoroughfares of the City of Washington, in said District. A jury of seven men were subsequently summoned in accordance with the prayer of said petition, and thereafter other proceedings were had and taken in said cause Number 544, which will hereafter be more particularly referred to. The said proceedings were instituted under and in accordance with an Act of Congress, approved February 10, 1899, entitled, "An Act to extend Rhode Island Avenue."

5. That no actual notice was given this complainant of the pendency of said proceedings, and there was, therefore, no appearance in his behalf before said jury during said proceedings.

3 6. That thereafter, to-wit, on or about the 1st day of December, 1899, the said jury of seven returned to this Honorable Court an alleged verdict wherein assessments aggregating \$895, as for benefits supposed to have resulted from the proposed extension of said Avenue, were attempted to be imposed upon the said lots belonging to this complainant, with interest thereon at the rate of four per centum per annum from the 8th day of February, 1900. A copy of said verdict, as this complainant is informed and believes and offers to prove, was transmitted to defendant Commissioners, by the Corporation Counsel, and constitutes and is the only document, record or proceeding in their office showing said assessment.

7. That thereafter, to-wit, on the 2d day of January, 1900, a rule was issued in said cause, directing this complainant and others to show cause, if any he or they had, why said alleged verdict should not be confirmed. Said rule was called to the attention of this complainant, not by any direct personal service of notice, but, as he now remembers, by some friend who had seen an advertisement thereof in one of the city papers. In response to said rule, this complainant filed in said proceedings a paper writing protesting against said alleged verdict and indicating dissatisfaction therewith.

8. That, as the record and proceedings in said cause disclose, other owners of lands affected by said verdict indicated their dissatisfaction

therewith, and filed in the cause exceptions thereto. And this complainant is advised by counsel and believes, and so believing charges and avers, that immediately upon the filing of said objections, the said verdict of the jury of seven became and was inoperative for any

4 purpose, and that no further or other proceedings could lawfully be had in the cause except upon and after the summoning of a jury of twelve. And complainant is advised and therefore charges that any assessments as for benefits against his said lot, predicated of the verdict of the jury of seven, is invalid and void.

9. The complainant further charges that said alleged assessment against his lots was made under the provisions of Sections 3 and 5 of said Act, which provide respectively as follows:

"SEC. 3. That of the amount found due and awarded as damages for and in respect of the land condemned under this act for the extending of said avenue, one-half thereof shall be assessed by said jury in said proceedings against those pieces or parcels of ground situate and lying on each side of said Rhode Island avenue extended, between Florida avenue, Maple avenue, Linden street and Le Droit avenue; and also those contained in squares eighteen and nineteen and the south half of square twenty in the recorded addition to Le Droit Park; and also those contained in blocks one and two, and the northwest corner lot of block seven in the subdivision known and designated as Bloomingdale; and also against so much of that tract of land known and designated as the David Moore tract as lies west of North Capitol Street."

"SEC. 5. That when confirmed by the court, the assessments made as aforesaid shall severally be a lien upon the land assessed, and shall be collected as special improvement taxes in the District of Columbia have been collected since February twentieth, eighteen hundred and seventy-one, and shall be payable in five equal installments, with interest at the rate of four per centum per annum until paid."

And complainant is advised by counsel and therefore charges that said alleged assessment is invalid and void, because the said Section 5 does not, nor does any other section or part of said Act, provide when the said installments shall be payable, or from what date interest thereon shall be computed.

10. That the said alleged assessments, as the same appear on the tax records of defendant corporation, cast a cloud upon the title of this complainant to the lots so sought to be assessed, and prevent him from selling, or borrowing money upon the security of, said land.

5 11. That complainant has called the attention of the proper authorities of defendant corporation to the invalidity of said assessments, and has requested that no attempt be made to enforce collection thereof until after their status had been judicially ascertained and determined. But said authorities declined to accede to complainant's said request, and on the 12th day of April, 1902, stated that a sale of said lots for the payment in full of said assessments would shortly be made under an advertisement thereof previously published by said Commissioners.

12. That the said Commissioners have advertised said lots for sale, because of the non-payment of the said alleged assessments, together

with many other pieces or parcels of land similarly affected, at a public sale which commenced on the 8th day of April, 1902, and to continue from day to day till all said property, and other advertised for sale for non-payment of taxes, have been sold.

13. That the advertisement of complainant's said lot No. 28 appears on page 91, of the pamphlet advertisement of said tax sales, as follows:

"Moore, David, transferred to Dennis Shea.

Le Droit Park, block 12, subplot 28 and improvements:	
Assessment for extension of Rhode Island Avenue....	\$67.00
Interest from February 8, 1900.....	5.80
Advertisement50
	<hr/>
	\$73.30

And the advertisement of complainant's said lots Nos. 14, 15, 16, 17 and 18 appears on pages 96 and 97 of said pamphlet, as follows:

"Shea, Dennis C.

Le Droit Park Addition, block 18, subplot 14 and improvements:	
Assessment for extension of Rhode Island Avenue....	\$120.00
Interest from February 6, 1900.....	10.42
Advertisement50
	<hr/>
	\$130.92

6

"Le Droit Park Addition, block 18, subplot 15 and improvements:

Assessment for extension of Rhode Island Avenue....	130.00
Interest from February 6, 1900.....	11.29
Advertisement50
	<hr/>
	141.79

"Shea, Dennis C.

Le Droit Park addition, block 18, subplot 16 and improvements:	
Assessment for extension of Rhode Island Avenue....	140.00
Interest from February 6, 1900.....	12.16
Advertisement50
	<hr/>
	152.66

Le Droit Park Addition, block 18, subplot 17 and improvements:

Assessment for extension of Rhode Island Avenue....	138.00
Interest from February 6, 1900.....	11.99
Advertisement50
	<hr/>
	150.49

"Le Droit Park Addition, block 18, subplot 18 and improvements:

Assessment for extension of Rhode Island avenue....	300.00
Interest from February 6, 1900.....	26.06
Advertisement50

326.56

14. That said advertisement further and seriously clouds the title of complainant to his said lots, and should the same be sold, complainant's title would be still further complicated by the intervention of third persons claiming under such sale and a purchase thereat.

15. That the invalidity of said alleged assessment does not appear upon the face of said tax records, but depends upon judicial investigation and decision, whereas a deed given a purchaser of said lots at such tax sale would, under the Statute in such case provided, be *prima facie* evidence in favor of the grantee therein named of all antecedent proceedings in connection with the assessment of said tax.

16. That he is advised by counsel that however the provisions of said Section 5 of the aforesaid act may be construed, by no possible construction can it properly be held that the whole amount of

7 said alleged assessment is now due, and that the defendant

Commissioners are in any view of the case without power at this time to demand present payment of the whole amount of said alleged assessments, or to advertise said lots for sale as for default in such payment.

17. That the complainant is further advised by counsel that the said law under which the aforesaid proceedings were had and taken is unconstitutional and void, because the prescribed assessments are not uniform and equal throughout the taxing district, and that any enforcement thereof will be in effect a taking of this complainant's property without due process of law.

18. And complainant further shows that he is in possession of all of said lots, so attempted to be assessed, and is therefore unable to resort to any proceedings at law to dispel the clouds so as aforesaid cast upon his title.

Wherefore, and being without remedy in the premises save in this Honorable Court where such matters are properly cognizable, the complainant prays:

1. That Henry B. Macfarland, John W. Ross and John Biddle, as commissioners as aforesaid, and the District of Columbia, a municipal corporation as aforesaid, may be made parties defendant to this bill, and duly served with process, requiring them and each of them to be and appear in this Court in person or by counsel, by some certain day to be in said process named, to answer the foregoing bill of complaint and abide by and perform such orders as may be passed herein.

2. That the defendant corporation, the District of Columbia, its said Commissioners and other agents and servants may be temporarily and perpetually enjoined and restrained from selling the
8 complainant's said lots or any of them, under the advertisement in said bill mentioned and described.

3. That the said alleged assessments as for supposed benefits so as

aforesaid made against the said lots of this complainant, be declared to be invalid and void.

4. That the said defendants be decreed to cancel the said alleged assessments on the tax records of defendant corporation, in their custody, and perpetually enjoined from referring thereto in any tax certificate to be hereafter issued by them in respect of said lots.

That complainant may have such further and other relief as the nature of the case may require and to the court may seem fit.

And complainant will ever pray &c.

DENNIS C. SHEA.

SAM'L MADDOX,
Solicitor for Complainant.

DISTRICT OF COLUMBIA, *sc*:

Before me, the undersigned, personally appeared Dennis C. Shea, who, being by me first duly sworn, deposes and says:

That he has read over the foregoing bill of complaint by him subscribed and knows the contents thereof; that the matters and things therein alleged as of his own knowledge are true, and the matters and things therein alleged on information and belief he believes to be true.

DENNIS C. SHEA.

Sworn to before me and subscribed in my presence this 14th day of April, A. D., 1902.

[SEAL.]

H. PRESCOTT GATLEY,
Notary Public, D. C.

9

Restraining Order.

Filed April 14, 1902.

In the Supreme Court of the District of Columbia.

Equity. No. 23238.

DENNIS C. SHEA, Complainant,

vs.

HENRY B. F. MACFARLAND, JOHN W. ROSS, and JOHN BIDDLE, Commissioners of the District of Columbia, and THE DISTRICT OF COLUMBIA, Defendants.

Upon consideration of the bill in this cause filed, it is, this 14th day of April, A. D. 1902, adjudged and ordered that the defendant corporation, the District of Columbia, its commissioners, agents and servants be, and they are hereby, enjoined, as prayed in the bill, from selling or offering for sale sub-lot numbered twenty-eight in block numbered twelve (12), in a subdivision of lands known as Le Droit Park, and lots numbered fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18) in a subdivision of lands

known as addition to Le Droit Park, all lying and being in the District of Columbia, in accordance with their pending advertisement of such proposed sale, as for nonpayment of assessments of benefits from the extension of Rhode Island Avenue, until the further order of the Court to be made, if at all, after a hearing of the matters involved, which is set for the 23rd day of April, 1902, of which the defendants will take notice. This order to become operative upon compliance by the complainant with Equity rule 42.

By the Court:

A. C. BRADLEY, *Justice.*

10

Demurrer.

Filed May 7, 1902.

In the Supreme Court of the District of Columbia.

Equity. No. 23238.

DENNIS C. SHEA, Complainant,

vs.

HENRY B. F. MACFARLAND, JOHN W. ROSS, and JOHN BIDDLE, Commissioners of the District of Columbia, and THE DISTRICT OF COLUMBIA, Defendants.

The defendants, The District of Columbia, and Henry B. F. Macfarland, John W. Ross and John Biddle, Commissioners of the District of Columbia, say that the complainant has not stated in his Bill of Complaint, filed herein, such a case as entitles him to the relief therein prayed, or to any other relief against these defendants, or any of them.

And these defendants further say that the complainant has not filed with his said Bill the records and proceedings in cause No. 544, of the District Court Docket of this Honorable Court, mentioned and referred to in said Bill.

Wherefore, the defendants demand the judgment of the Court, whether they shall make further answer to said Bill and pray to be hence dismissed with their costs.

HENRY B. F. MACFARLAND,
JOHN W. ROSS,
JOHN BIDDLE,

Commissioners of the District of Columbia.

DISTRICT OF COLUMBIA, ss:

Personally appears Henry B. F. Macfarland, who, being duly sworn says: That he is the President of the Board of Commissioners of the District of Columbia; that he has read the foregoing
11 demurrer and that the same is not interposed for delay.

HENRY B. F. MACFARLAND,

Subscribed and sworn to before me, this 22nd day of April, A. D. 1902.

[SEAL.]

WILLIAM TINDALL,
Notary Public.

I hereby certify that the foregoing demurrer is well founded in law, in my opinion.

A. B. DUVALL,
Solicitors for Def's.

Order Overruling Demurrer.

Filed March 19, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 23238.

DENNIS C. SHEA

vs.

THE DISTRICT OF COLUMBIA ET AL.

This cause coming on to be heard on the demurrer to the bill of complaint filed herein of the defendants and being argued by counsel and duly considered, it is this 19th day of March, A. D. 1907, adjudged, ordered and decreed that said demurrer be, and it is hereby, overruled, with leave to said defendants to answer the bill, if so advised, within ten days from this date.

By the Court:

HARRY M. CLABAUGH,
Chief Justice.

Answer of Commissioners, D. C.

Filed June 25, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 23238.

DENNIS C. SHEA

v.

HENRY B. F. MACFARLAND ET AL.

Now come Henry B. F. Macfarland, Henry L. West, and Jay J. Morrow, Commissioners of the District of Columbia, and the District of Columbia, and for answer to the bill of complaint herein, show to the Court as follows:

1. They admit the allegations of paragraph 1.
2. They say that defendants Ross and Biddle are no longer Commissioners of the District of Columbia, but have been succeeded by Henry L. West and Jay J. Morrow, respectively.

3 and 4. They admit the allegation of paragraphs 3 and 4.

5. Defendants say that notice of the said proceedings for the extension of Rhode Island avenue were duly made by publication in newspapers of this City, that the said notices were legally sufficient, and duly appear in the proceedings of District cause No. 544, which are hereby referred to and made a part hereof.

6 and 7. They admit the allegations of paragraphs 6 and 7.

8. They admit the allegations of paragraph eight, but deny that the proceedings in the said District cause No. 544 became inoperative and void upon filing of objections by the parties interested therein.

9. Defendants — that the said assessments were laid under the said Act as alleged, but deny that the said assessments are illegal and void; that by the Act of July 1, 1902, the said assessments were made payable in five equal annual instalments with interest at four per cent. from and after sixty days after the confirmation of the verdict, and that the said assessments are now long overdue.

10. Defendants deny that the said assessments are cloud upon the complainant's title.

11 to 13. Defendants admit the allegations of paragraphs eleven to thirteen inclusive.

14, 15. Defendants deny that the said proceedings are a cloud upon complainant's title, but say if the said assessments be illegal, which they do not admit, but assert to be legal and valid, the said illegality appears on the face of the proceedings leading up to and including the said assessment, and in no sense constitute a legal cloud on the title.

16. Defendants say again that by the Act of July 1, 1902, the said instalments are long overdue.

17. Defendants deny that the said proceedings were unconstitutional and void and that the enforcement thereof will constitute a taking of complainant's property without due process of law.

18. Defendants admit that complainant is in possession of the said property; but they assert that his remedy in the said District cause was full and complete, and that had he not acquiesced in the legality of the said proceedings, he might have obtained full relief therein, were he entitled to the same; that the said complainant moved to quash the proceedings in the said District cause and the said motion was overruled and the verdict therein confirmed; that certain of the parties therein appealed to the Court of Appeals of this District and entered into a stipulation with the attorneys for the District of Columbia that the appeal should abide by the decision of the Supreme Court of the United States in the case of *Wight v.*

14 Davidson, and that when the said Supreme Court upheld the validity of the acts involved in that case, the said appeal was abandoned, and no other steps taken by the complainant.

E. H. THOMAS,

Corporation Counsel, for Respondents.

Oath Waived.

SAM'L MADDOX,

Sol'r for Complainant.

Joinder of Issue.

Filed June 25, 1907.

In the Supreme Court of the District of Columbia, the 19th Day of April, 1907.

Equity. No. 23238.

DENNIS C. SHEA

vs.

DISTRICT OF COLUMBIA.

The Complainant hereby joins issue in the answer of defendants.
 SAM'L MADDOX,
Attorney for Compl't.

Order Substituting Parties.

Filed June 25, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 23238.

DENNIS C. SHEA

vs.

HENRY B. F. MACFARLAND ET AL.

It being represented to the Court that the defendants John W. Ross and John Biddle are no longer Commissioners of the District of Columbia, but have been succeeded in office by Henry L. West and Jay J. Morrow, respectively,

15 It is this 25th day of June, 1907, ordered, now for then,
 that the said Henry L. West and Jay J. Morrow be, and
 they are hereby, made parties defendant to this cause in lieu
 of the said John W. Ross and John Biddle.

HARRY M. CLABAUGH,
Chief Justice.

Agreed Statement of Facts.

Filed April 19, 1907.

In the Supreme Court of the District of Columbia.

In Equity. No. 23238.

DENNIS C. SHEA, Complainant,

vs.

HENRY B. MACFARLAND and Others, Commissioners, &c., Defendants.

Dennis C. Shea, the above named complainant, for many years has been the owner of lot 28 block 12 in a subdivision of lands

known as Le Droit Park, and of lots 14, 15, 16, 17 and 18 block 18 in a certain other subdivision of lands known as Addition to Le Droit Park, all in the District of Columbia.

On the 8th day of March, 1899, the said Commissioners of the District of Columbia began proceedings in this Court, on the District side thereof, for summoning a jury of seven to award damages and assess benefits by reason of a proposed extension of Rhode Island Avenue under an Act of Congress approved February 10, 1899. A jury of seven was empaneled, and on the 1st day of December 1899, returned a verdict assessing, *inter alia*, complainant's said lots as follows: lot 12, \$67.; lot 14, \$120.; lot 15, \$130.; lot 16, \$140.; lot 17, \$138.; lot 18, \$300.; aggregating \$895. as for benefits supposed to have resulted thereto from the proposed extension of Rhode Island Avenue.

16 Of this proceeding complainant had no notice except as hereafter noted, and did not, therefore, appear before the jury at any time during their proceedings, either in person or by attorney. Notice was, however, given of the proposed proceeding by the said Commissioners by advertisement in The Washington Post and The Evening Star. Said advertisement described the lands to be assessed, as specified in said Act, but it did not contain complainant's name as being an interested party, and the fact of its publication was not known to complainant until the verdict of the jury was returned and filed in this Court.

Subsequently an order of ratification *nisi* was passed in the cause, and a copy thereof was served upon complainant, who at once, or shortly after such service, appeared in the cause and filed objections to the verdict.

Objections to the verdict, similar in character, were filed in the cause by other owners of lands against which benefits were assessed. Arguments were had before the District Court on the objections, and the same were overruled and the verdict confirmed on the 27th day of January 1900. It is further agreed between the parties that the proceedings in District cause No. 544 may be read at the hearing as a part of this stipulation.

In the pamphlet of sales for taxes in arrear on the first day of July 1901, issued by the officials of the District of Columbia, such sales being advertised to begin on the 8th day of April 1902, complainant's lots were advertised for sale as follows:

"Le Droit Part, block 12, subplot 28 and improvements:	
Assessments for extension of Rhode Island Avenue..	67.00
Interest from February 8, 1900.....	5.80
Advertisement50
	<hr/>
	\$73.30

17

Le Droit Park Addition, block 18, sub-lot 14 and improvements:

Assessment for extension of Rhode Island Avenue..	120.00
Interest from February 6, 1900.....	10.42
Advertisement50
	<hr/>
	130.92

proceedings have been taken in respect to Rhode Island Avenue, the extension of Rhode Island Avenue, and certain proceedings were taken, and certain assessments found against the complainants in this case. Thereupon the District authorities undertook to sell, or advertise for sale, certain properties of the complainants to pay for these respective assessments. It was then that the complainants filed their bill for an injunction in this cause, praying that the District be enjoined from selling the property of the complainants, upon the theory that the taxes so levied, these special assessments so levied, were absolutely void, as appears from the face of the proceedings, it appearing that no notice had been given and that exceptions had been filed in the case, which, under the authority of law, ought to have enforced a rehearing in the case as set out in the case of Saunders against Macfarland. At the moment there were exceptions, that moment the office performed by these seven jurors went for naught, and then there had to be a new assessment of twelve jurors, in accordance with the act, and by reason of this assessment, as shown by the proceeding itself, it was a menace to the title of the complainants and they asked, therefore, that the District be enjoined from selling and that the assessments be declared void, and so on.

This case was carefully argued by counsel on both sides, and I have given it a great deal of consideration, but I have determined

20 that there is one question in the case which is absolutely decisive of it, and that is the question of the jurisdiction of this court, because, if the court has jurisdiction, I should be inclined to hold that the relief prayed in the bill ought to be granted, but the question is, has this Court jurisdiction of this character of cases? Now, gentlemen, I am plainly of the opinion that it has not, and I think that counsel is entitled to know why I feel compelled to decide this case upon the theory of the jurisdiction, because, after all, that, to my mind, is about the only thing in the case which is serious.

Now, in the case of Dows *vs.* the City of Chicago, in 11 Wallace, 108, without going into the case at all, the Court says:

"A suit in equity will not lie to restrain the collection of a tax on the sole ground that the tax is illegal. There must exist in addition special circumstances, bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or where the property is real estate, throw a cloud upon the title of the complainant."

That was the ground upon which *this* case was decided.

In 15 Wallace, in the case of Hannevinkle *vs.* Georgetown, page 548, Mr. Justice Hunt delivered the opinion of the Court. I thought that in this case there might be a difference between a special and a general tax, because I saw reasons why equity, perhaps, ought not to take jurisdiction in cases of a general tax, but I did not see quite clearly why it would not have the right to act in a case of special tax. This case of Hannevinkle against Georgetown is a bill filed against the corporation of the city of Georgetown and its collector of taxes, to enjoin them from selling certain real estate for tax claimed by the corporation under a certain Act of Congress, which

made part of the city charter. "The bill alleged that the corporation attempted to condemn to public use, and open and improve Stoddard Street in that city; that the complainant owned certain premises described on that street, that a part of the premises were condemned to public use, and his damages assessed at \$3139; that the same jury which thus assessed his damages, assessed him also for benefits to the residue of his property arising from the same improvements in the sum of \$3425, and attempted to make the assessment a lien and charge on the said residue, by and for which the same could be sold. This the bill alleged was without authority of law and contrary to the act of Congress under which the city professed to act. The bill prayed that the defendants might be restrained from selling the property. An answer was put in. The cause was brought to a hearing upon an agreed state of facts, and the bill dismissed with costs. From this decree of dismissal the defendant now appealed to this court."

Mr. Justice Hunt said:

"The action in this case cannot be sustained. It has been the settled law of the country for a great many years, that an injunction bill to restrain the collection of a tax, on the sole ground of the illegality of the tax, cannot be maintained. There must be an allegation of fraud; that it creates a cloud upon the title; that there is apprehension of multiplicity of suits or some cause presenting a case of equity jurisdiction. This was decided as early as the days of Chancellor Kent in *Mooers v. Smedley*, and has been so held from that time onward. The remedy was held to be at law by writ of certiorari or by action of trespass.

"It has long been held also, that there exists no cloud upon the title which justifies the interference of a court of equity, where the proceedings are void upon their face, that is, the same record which must be introduced to establish the title claimed, will show that there is no title.

"The whole subject has been recently examined in this court in *Dows v. The City of Chicago*."

Now, in the case 168 United States, entirely familiar to counsel, which was the case in respect to Rock Creek Park, the court below, the Supreme Court of the District of Columbia, had dismissed or had enjoined the District from proceeding with the condemnation. The case then went to the Court of Appeals, and they sustained the lower court, and in the Court of Appeals, 8 Appeals, Judge Alvey dissented, and one of the grounds of his dissent was as follows:

"The effort to introduce an element that would give jurisdiction to the court by alleging that the threat of assessment for special benefits would produce a cloud upon the title of the property of the com-

21 plainants, because, if consummated, such assessment would create a lien upon the property, will not justify a court of equity in interposing, and thereby became a court of review upon the proceedings authorized by the statute. Such allegation is easily made, and it could as well be made in every case of proceeding at law, where the judgment would create a lien upon the property of the debtor, as in the present case. There must be something

more than the mere fact that the property may be subject to a lien, as the final result of the pending proceeding, in order to confer jurisdiction upon a court of equity to arrest such proceeding by injunction.

* * * * *

"Courts of equity are not constituted for the purpose of arresting proceedings, and assuming to themselves the right of disposing of cases, that are properly depending in the ordinary courts of law. It is only upon special and particular circumstances, appealing to the conscience of the chancellor, that a court of equity is justified in interposing for the relief of the party complaining. A court of equity is not constituted a court of review on constitutional questions that may be decided by tribunals inferior to the Supreme Court of the United States; nor is such court possessed of exclusive, nor even of concurrent, jurisdiction in respect to such questions; and hence there is no authority or reasonable ground for coming to a court of equity in a case like the present. In every case, circumstances should be stated that show that in the particular case there is an equity that cannot be availed of by the party complaining, in the proceedings sought to be restrained. There can be no reason or propriety in appealing to a court of equity to restrain proceedings that are being regularly conducted in other courts, competent to construe the statutes under which they act, and to decide every question that may arise in the course of the proceeding. To allow litigations to be thus diverted, tends to the multiplicity of litigation, and the production of unnecessary delay and expense, to say nothing of the unnecessary vexation to parties. I am of opinion, therefore, that there is no jurisdiction in equity to maintain the bill in this case."

When the case went to the Supreme Court of the United States, they reversed the Court of Appeals and then in the last paragraph of their opinion they say of Judge Alvey's opinion:

"We adopt the observation made in the dissenting opinion in the Court of Appeals: 'There can be no reason or propriety in appealing to a court of equity to restrain proceedings that are being conducted in other courts, competent to construe the statutes under which they act, and to decide every question that may arise in the course of the proceeding. To allow litigations to be thus diverted tends to the multiplication of litigation, and the production of unnecessary delay and expense—to say nothing of the unnecessary vexation to parties.'"

So they adopt in every language the finding of Judge Alvey in the dissenting opinion upon this very question as to the jurisdiction of a court of equity in a case like this. How does it apply to the case at bar? The argument was made to the court that the proceedings were absolutely void on their face, and that they had no right to advertise this property for sale, and as long as that lien was pending, though it was an illegal lien—if I may use that expression—a lien based upon a void procedure, still it affected the title to the property and, therefore, equity ought to come in and prevent it. Now, the very same question was argued in this case of Hanne-winkle against Georgetown, that very same question was passed

upon, that it was not sufficient, but they go a step further, and Judge Alvey, in the dissenting opinion, seems to have clearly stated the law. Here is a proceeding that arises in the Supreme Court of the District of Columbia. What right has this court to pass in review upon the question passed upon in that court, and from which there could have been an appeal? What superior right is there in a court of equity—what reason is there why a court of equity should undertake to dispossess—if I may use that term—the District court of jurisdiction as to such a question, which questions are particularly placed within the jurisdiction of that court, and by authority of law they are to pass upon all questions incident to the opening and condemnation of streets, and so on. That it does seem to me that the proper forum for parties complaining of unjust assessments and void assessments, and so on, is not to go into a court of equity, but to make the point in the District court and to appeal therefrom.

Now, then, in this particular case, it does not work any particular hardship, because in this case of Saunders against Macfarland, the assessment was made and a lien created, as it was supposed, some years before it went to the Court of Appeals, and the Court said that the mere fact that the term passed had no effect on the case at that time; that they could take up a case no matter when or how long. That is the effect of it. These facts may have existed because the record itself shows that there had been objections in these cases filed, and the moment those objections were filed, the proceedings under them became absolutely void in behalf of the man who moved them. So that all the complainants in this case could have possibly expected from a court of equity could have been performed and done in the District court, that having taken jurisdiction of the case. In my judgment, Judge Alvey is perfectly right, that they had no right to come into a court of equity and ask the court to take out of the District court questions which that District court could settle and had the right and, under the law, was the proper channel to settle the very questions which the court of equity is now asked to interpose and take from that particular court, and, therefore, I think that for the reasons I have endeavored to assign, the bill in this case ought to be dismissed.

Mr. MADDUX: Your Honor, I think, lost sight of the principal objection I made in the bill, and that was, if we assumed that this tax was regular and proper, yet the Commissioners of the District of Columbia were exceeding their authority in undertaking to sell for the entire amount, as they had advertised.

The COURT: I remember that.

Mr. MADDUX: And the prayer of the bill was that the Commissioners be restrained from making such a sale, because under no circumstances could the entire amount be taken. The bill also invited the attention of the court of equity to the other features, but the injunction was not asked on the ground of the invalidity of the tax, but on the ground that the people who had authority to collect it were exceeding their authority, and the other things that your

Honor has spoken about were incidental, but it is that to which I desire to call the attention of the court.

The COURT: The court has totally misunderstood the conception of your bill and your argument, if the ground and the basis—almost the entire basis—of the bill was not upon the theory that they were undertaking to sell the property when there was a lien which was absolutely void on its face, and they had no right to sell. The other part, I remember, was entirely incidental. They had no right, of course, to undertake to collect something that is not due. That, unquestionably, is true.

Mr. MADDOX: That was the main point of the bill, that they could not collect in five installments, when they were not due.

The COURT: They not only could not, but they repudiated any idea that they could. I was passing on the larger questions which were argued, and the other part I understood to be a mere incident to the bill, so much so that my entire time was given up to the question as to whether you had stated in your bill any right for the injunction which you are asking on the ground that the proceedings were absolutely void. There was some argument as to the amount that was due. Of course, they were not entitled to collect what was not due, at any rate, and I so understood counsel to assert at the hearing of this case.

Mr. MADDOX: If you- Honor please, the advertisement was for the entire amount of the tax, and they were undertaking to collect that by a sale, and the sale was then pending. Now, at the most, the owners of the property could not have owed more than two installments or two-fifths of the whole amount, and it was for the purpose of restraining that sale for the entire amount that this bill was filed.

Mr. THOMAS: The statement of fact does not show anything of that kind. We agreed on a statement of facts and it shows nothing of that kind.

The COURT: I have not given very much attention to that phase of the bill, Mr. Maddox, because it was not the question argued before me. It was not the question insisted upon. It was stated in argument as a reason, but not the real reason for the equity jurisdiction, and when I came to examine your statement of facts in the case and the answers here, there was not even the slightest suggestion to bring that to my attention. If that were the motive of your

bill, if that were the purpose of your bill, to restrain them
23 because they were asking for a certain amount of money
which would not be due at that time, that question would be long passed away now, because it is all due now, and I understand, of course, that that would relate back to the time of the filing of your bill. But that question was not put in your agreed statement of facts, and was not by me regarded as the serious ground upon which you filed your bill.

Mr. MADDOX: The reason it was not put in that agreed statement of facts was because it is a matter of law arising on the averments of the bill and the agreed statement of facts says that the cause was to be heard on the bill and the answer and the agreed statement of facts.

The COURT: I do not think that has the slightest thing to do with the bill, for manifest reasons, but it may be a matter which I ought to consider in the taxation of costs, which I perhaps will do, but I do not think it has any real function to perform so far as the jurisdiction of this court is concerned.

HARRY M. CLABAUGH,
Chief Justice.

Memoranda.

July 15, 1908.—Appeal bond filed.

Time to file Transcript of Record in Court of Appeals extended from time to time until the 4th day of May, 1908.

Directions to Clerk for Preparation of Transcript of Record.

Filed March 27, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 23238.

DENNIS C. SHEA, Complainant,

vs.

THE DISTRICT OF COLUMBIA and Others, Defendants.

To the Clerk:

In making up the record for appeal in the above-entitled
24 cause, please include the following and no other memorandums of the proceedings.

1. The original bill, and restraining order issued thereon.
2. The demurrer of the District of Columbia, and the order overruling the same.
3. The answers of defendants and memorandum joinder of issue.
4. Order substituting parties.
5. Agreed statement of facts.
6. Decree passed July 3, 1907, and appeal by complainants.
7. Memorandum. Appeal bond approved and filed July 15, 1907.
8. Opinion of Mr. Chief Justice Clabaugh.
9. Memoranda. Extensions of time for filing transcript of record to May 4, 1908.

Respectfully yours,

MADDOX AND GATLEY,
Sol'rs for Complainant.

25 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 24, both inclusive, to be a true and correct transcript of the record

according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 23238 In Equity, wherein Dennis C. Shea is Complainant and Henry B. F. Macfarland, *et als.*, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 30th day of March, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No 1885. Dennis C. Shea, appellant, *vs.* Henry B. F. Macfarland *et al.* Court of Appeals, District of Columbia. Filed Mar. 30, 1908. Henry W. Hodges, clerk.



